Abstract Proceedings of the Travancore Legislative Council.

The Council met again in the Dewan's room, Public Offices, at 8 A. M., on Monday the 19th December 1904. / 5th Margaly 1080.

PRESENT.

V. P. Madhava Rao Esquire, C. I. E.,
DEWAN ... ... *Presiding.*

V. Nagam Aiya Esq., B. A., F. R. H. S.
A. Govinda Pill i Esq., B. A. & B. L.
T. Rajaram Row Esq., B. A.
V. I. Kesava Pillai Esq., M. A.
A. J. Vieyra Esq., B. A.
R. Mahadeva Iyer Esq., B. A.
E. Ramier Esq.
E. J. John Esq., B. A. & B. L.

R. Viraraghava Aiyangar Esq., B. A. & B. L. ... *Secretary.*

STAMP BILL.

Section 26, clause (c).

Mr. Ramier.—I beg to propose that the word 'maximum' be substituted for 'total' in line 4 of this clause. In the British Indian Stamp Act I of 1879, the words were 'total amount.' This wording was dropped and the word 'maximum' substituted by Act II of 1899. The reason apparently is to impose a lighter stamp duty in the case of annuities. The word 'maximum' means the highest figure and thus the object of the Legislature was to have the duty calculated on the highest amount payable in any year during the period of twelve years fixed by the clause.

Seconded by Mr. Mahadeva Iyer.

Carried.

Section 27.

Mr. Mahadeva Iyer.—I beg to propose that the following be substituted for the first proviso to this section :—

"Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

(*a*) when the lease has been granted by or on behalf of Our Government at such amount or value as the Division Peishcar may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to Government under the lease, or,

(*b*) when the lease has been granted by any other person, at twenty-thousand rupees a year;

LIBRARY ARCHIVES Kerala Legislative Assembly

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease."

This amendment has been introduced by Act XV of 1904 to which I have previously referred and the reason given for it in the Statement of Objects and Reasons applies with equal force to the circumstances of this country :—

"Under section 26 of the Act, where the value of the subject-matter of an instrument is unknown or indeterminate, the contracting parties may use their discretion as to the value of the stamp to be affixed to the instrument, but no sum can be recovered under it in excess of the amount covered by the duty actually paid. An exception is, however, made in the case of mining leases in which a royalty or share of the produce is reserved as rent. The value of the share or royalty is necessarily indeterminate in the majority of such cases, and it is therefore provided that, if the lease be stamped on an assumed valuation of Rs. 20,000 a year, the sum actually due under the lease may be recovered, whatever the amount may be. This provision is unsuitable in the case of mining leases granted by the Government; for the natural tendency of revenue officers is to safe-guard the interests of the Government by valuing the royalty at the figure just referred to in every case. The stamp-duty ordinarily payable on this valuation is Rs. 200; and this constitutes an unduly heavy burden in the case of small and unproductive mines. It is proposed, therefore, by clause 4 of the Bill, to expand the section so as to provide that, where a mining lease is granted by the Government, the Collector may estimate the amount of royalty which he considers likely to be payable, and it will be sufficient if the lease is stamped in accordance with his estimate."

Seconded by Mr. Rajaram Row.

Carried.

Mr. Ramier.—I beg to propose that the following be added as the third proviso to this section :—

"Provided also that nothing in this section shall debar any person from claiming any higher amount than that covered by the stamp already used if such person pays the value of the additional stamp required to cover the higher amount claimed together with a penalty of five times such value along with the claim preferred by him to a person who has by law or consent of parties authority to receive evidence."

The object of this amendment is to remove a hardship in the existing law. Now, a person putting a document liable to optional stamp in evidence cannot recover upon it more than what the optional stamp would cover, notwithstanding the defendant's admission of liability for a larger sum. It has been so held in *Krishnasami Pillai* v *The Municipal Commissioners for Madras*, 4 Mad. H. C R. 120 and the plaintiff who sues upon such an instrument cannot make up the deficiency by paying the additional stamp-duty and penalty. This, I submit, is hard. In the case of instruments not duly stamped or insufficiently stamped, the law helps the party by allowing the payment of the proper stamp-duty and penalty. I fail to see why this should not be done in the present case also where it is not possible for the person to ascertain the amount and where it is natural that *bona fide* mistakes may arise as to the stamp that is to be affixed. A provision of the nature now proposed will afford sufficient protection to the public without in any way affecting the Government revenue.

Seconded by Mr. John.

Mr. Govinda Pillai.—I beg to oppose the amendment. I think as a question of policy it is not desirable to allow the amendment, because it allows parties to enter into agreements without caring to know the subject-matter of the same by holding out a temptation to them to fix a stamp of much lower value and then take their chance of having to pay more, if a suit has to be filed.

Mr. Kesava Pillai.—The Bill before us is one for the purpose of protecting the stamp revenue. If the proviso is put in, it would be opening a wide door for frustrating the real object of the stamp law. I am not therefore for the amendment.

Mr. Nagam Aiya.—I would support the amendment.

LIBRARY ARCHIVES Kerala Legislative Assembly

After some discussion, the amendment was put to the vote and lost.

Section 30, clause (a).

Mr. Mahadeva Iyer.—I beg to propose that for the words and figure "No. 6 (Agreement to mortgage)," the words and figure "No. 6 (Agreement relating to Deposit of Title-deeds, Pawn or Pledge)" be substituted. This amendment is also taken from the recent Amendment Act XV of 1904.

Seconded by Mr. Rajaram Row.
Carried.

Section 30, clause (g).

Mr. Mahadeva Iyer.—I beg to propose that the words 'or Civil Court' in line 7 and the word 'court' in line 8 of this clause be omitted. This amendment follows the one adopted in clause (14) of section 3, where the words 'or any Civil Court' have been omitted.

Seconded by Mr. Ramier.
Carried.

Section 33.

Mr. Ramier.—Sir, I beg permission to move on behalf of my learned friend Mr. Sesha Aiyar who is unavoidably absent to-day the several amendments standing against his name as he has written to me to do so.

Permission having been granted, Mr. Ramier proposed that the words "or any bill of exchange or promissory note' be omitted from clause (c) of the proviso to the section, and in doing so, said:—

"This is the first of a series of similar amendments appearing in my friend's memo and as the principle on which these amendments stand is the same and as the decision the Council may come to on this amendment would really govern the other amendments as well, I would take this opportunity of stating the grounds on which I propose the amendment. Bills of exchange and promissory notes are instruments of a peculiar nature and subject to peculiar legal incidents. They are more known to the mercantile community than to the ordinary public. In other cases of unstamped and insufficiently stamped instruments, the law is lenient and allows the legal defect to be remedied by making it possible for the defaulting party to pay the duty and penalty. I submit that this principle which punishes the defaulter but which at the same time does not deny him justice, is an excellent one and should, I think, be extended to such instruments as bills of exchange and promissory notes, the nature and legal incidents of which are but imperfectly understood by the lay public. In fact, there is the greater reason for extending the principle, because otherwise the party who has through ignorance, *bona-fide* mistake or unsound advice chosen to treat what is really a pro-note as an instrument of a different denomination is absolutely without a remedy. He loses the whole of his claim, because owing to the technicality of the law, the defect is one which could not be remedied. Lord Cairns, L. C., says in Marine Investment Co. *v* Hairside, 5 English and Irish App. 634: 'It is always in some sense a disagreeable and sometimes an invidious thing to hold that a case should fail for want of a stamp being affixed to an instrument and there are cases in which such a result arising from accident must be regarded with painful regret.' There are also dicta of other eminent English judges to the same effect. I may also state that it is sometimes very difficult to decide whether a particular document is a promissory note or not. An instance of this is furnished by the case reported in (1895) 2 Q. B. 598, where a document held to be a pro-note by the Court of Queen's Bench was held by the Court of Appeal to be an agreement. I would next refer to the Judgment of the Travancore High Court in A. S. No. 232 of 1078 where the plaintiff was non-suited, because the instrument on which he had brought the suit was a pro-note which, not having been duly stamped, was held to be inadmissible in evidence. On a reference to the Full Bench, the High Court held that the pro-note being inadmissible for want of a proper stamp, 'whatever may be the merits of the case, the plaintiff cannot be allowed to prove the loan *aliunde*'. I would lastly refer the Council to proviso (*a*) of section 36 in which, I submit, the principle now contended for is embodied."

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. John.—I beg to second the amendment. Whatever reasons there may exist for retaining the provision in England and other commercial countries, I believe that in this country the people do not recognize any distinction between bonds and pro-notes. Of course, they do so without knowing exactly the consequences. While in the case of some instruments the law allows their reception in evidence on payment of duty and penalty it is difficult to conceive why the same rule should not also be extended to other cases. The amendment while it does not take away any portion of the stamp revenue, simply assists the poor and ignorant to rectify their *bona fide* mistakes. Many transactions which were formerly evidenced by bonds are now entered into under promissory notes and it would certainly be to the advantage of these poor and ignorant folks of the interior to enact such a provision. The cause of justice is furthered and Government revenue is also protected.

Mr. Govinda Pillai.—I beg to oppose the amendment. I think the amendment if adopted would only hold out a temptation to people to defraud the stamp revenue. The policy of the law is to enforce prompt payment of the stamp-duty. As observed in the argument in the case reported in I. L. R. 24 All. p 374 " not one receipt in a thousand perhaps is ever produced in court and if the omission to stamp a receipt could be subsequently completely cured for all purposes by payment of the duty and penalty, it would not be worth while to stamp a receipt and great loss would be caused to the revenue ". I wish to point out that the principle underlying clause (*d*) of proviso to section 36 is different from what it has been represented to be by the learned mover of the amendment. This clause only refers to the case of a person who wants to resist a claim made against him and then such person, if he produces an unstamped receipt under the conditions laid down in the clause is allowed to pay a penalty of one rupee and get the document admitted *as against the defaulter*. This is entirely different from the principle contended for. I am therefore against the amendment proposed.

Mr. Kesava Pillai.—I cannot agree to the amendment. In addition to the arguments already advanced, I wish to point out that the heading of this Chapter is " Adjudication as to stamps. " There will be no necessity for adjudication in cases of the kind covered by the amendment. The transactions under bills exchange and promissory notes are subject to low duty and are numerous. These are created on a different footing from other transactions because parties deliberately resort to them in preference to securing other evidences of title for the purpose of avoiding payment of higher duty.

After some discussion, the amendment was put to the vote and lost.

Section 36.

Mr. Ramier (For Mr. Sesha Aiyar).—I beg to propose that clause (*c*) of the proviso to section 36 be brought as the last clause. It is so in the British Act also.

Seconded by Mr. Mahadeva Iyer.

Carried.

Section 40.

Mr. Ramier (For Mr. Sesha Aiyar).—I beg to move that the word " the " be substituted for " a " in line 2. The amendment is only verbal.

Seconded by Mr. Mahadeva Iyer.

Carried.

Mr. Ramier (For Mr. Sesha Aiyar).—I beg to propose that the words ' or if no application is made, with the sanction of the Dewan ' be inserted between ' behalf ' and ' refund ' in line 7. The amendment is based on a similar provision in the corresponding section of the British Act where such a power is given to the Chief Controlling Revenue Authority.

Seconded by Mr. Mahadeva Iyer.

Carried.

Section 42.

Mr. Ramier (For Mr. Sesha Aiyar).—I beg to move that the word ' inadvertence ' be inserted between ' mistake ' and ' or ' in lines 19 and 20.

LIBRARY ARCHIVES Kerala Legislative Assembly

Seconded by Mr. Mahadeva Iyer.

Mr. Rajaram Row.—I oppose the amendment as the addition would make the language too wide.

The amendment was put to the vote and lost.

Section 43, clause (2).

Mr. Mahadeva Iyer.—I beg to propose that the word 'returned' be substituted for 'return' in line 10.

Seconded by Mr. Vieyra.

Carried.

Section 46, clauses (1) and (2).

Mr. Mahadeva Iyer.—I beg to propose that the word 'Dewan' be substituted for "Division Peishcar" occurring in each of the clauses (1) and (2) and that the words 'with the sanction of the Dewan' in lines 8 and 9 of clause (2) be omitted.

It is the Division Peishcar himself who imposes the *penalty* under clause (*b*) of section 41. In the corresponding section of the British Indian Act, the power of refunding is vested in the Chief Controlling Revenue Authority. Hence the amendment.

Seconded by Mr. Ramier.

President.—Taking, as we do, the British Indian Act as our guide, I think we might safely substitute "Division Peishcar" for "Collector" and "Dewan" for "Chief Controlling Revenue Authority" not only in this but in other sections as well.

Carried.

Section 46, clause (3).

Mr. Mahadeva Iyer.—I beg to propose that clause (3) of this section be omitted. This clause provides for a system of appeals from the decisions of the Division Peishcars to the Dewan in certain cases, which does not exist under the old Regulation or the British Indian Act which we have taken as our model. In Chapter VI of that Act entitled "Reference and Revision" there is a distinct provision that 'the powers exercisable by a Collector under Chapter IV and Chapter V shall in all cases be subject to the control of the Chief Controlling Revenue Authority'. It seems to me that we cannot do better than follow the provisions of the British Indian Act in this respect. The experience gained during the 21 years our Stamp Regulation has been in force does not, in my humble opinion, warrant any departure from the procedure now in force both here and in British India. I would therefore propose to omit the clause altogether.

Seconded by Mr. Kesava Pillai.

Carried.

Section 48.

Mr. Ramier (For Mr. Sesha Aiyar).—I beg to propose that the word 'hereinbefore' be substituted for 'herein' in line 9 of this section. The amendment is verbal and is intended to make the wording more precise.

Seconded by Mr. Mahadeva Iyer.

Carried.

Section 50, clause (d).

Mr. Mahadeva Iyer.—I beg to propose that the words 'duly stamped' be omitted and the words "bearing a stamp of not less value" be substituted for the words "for the same consideration", in each of the paras (6) and (7) of this clause, and that the word 'is' be added at the beginning of para (7).

The amendment seeks to bring the wording in strict conformity with that of the corresponding section of the British Indian Act.

Seconded by Mr. Vieyra.

Carried.

LIBRARY ARCHIVES Kerala Legislative Assembly

Section 57.

Mr. Mahadeva Iyer.—I beg to propose that the word 'appeals' be omitted from the heading of Chapter VI and that for section 57 of the Bill the following two sections be substituted:—

"57. (1) The powers exercisable by a Division Peishcar under Chapter IV and Chapter V *and under clause (a) of the first proviso to section 27* shall in all cases be subject to the control of the Dewan.

(2) If any Division Peishcar acting under section 32, section 41, or section 42, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the Dewan.

(3) The Dewan shall consider the case and send a copy of his decision to the Division Peishcar who shall proceed to assess and charge the duty (if any) in conformity with such decision.

57 A. (1) The Dewan may state any case referred to him under section 57, sub-section (2), *or otherwise coming to his notice*, and refer such case with his own opinion thereon to the High Court.

(2) Every such case shall be decided by a Full Bench of the High Court and in case of difference, the opinion of the majority shall prevail."

These two sections are adaptations of sections 56 and 57 of British Act II of 1899. In moving the amendment to omit clause (3) of section 46, I have already given my reasons for adopting the general powers of revision vested in the Chief Controlling Revenue Authority by the British Indian Act. I shall not therefore take up the time of the Council by repeating them. I would only submit for the consideration of the Council that the general power of revision contemplated by the amendment contains a well-considered and useful provision which is equally, if not better, suited to the circumstances of this country.

The words 'under clause (*a*) of the proviso to section 27' in section 57 (1) as now proposed are newly put in and have reference to the amendment adopted in section 27.

The introduction of the words "or otherwise coming to his notice" in clause (1) of section 57 A is also an adaptation of the British Indian Act.

The rest of the provisions in the two sections now proposed are already in section 57 of the Bill. I beg to move therefore that these amendments be adopted.

Seconded by Mr. Ramier.

Mr. Kesava Pillai.—In the draft Bill as originally introduced, clause (1) of section 57 now proposed found a place as a separate section. There was also another section giving a right of appeal to the Dewan.

Mr. Govinda Pillai.—As a member of the Select Committee which sat on this Bill, I beg to state that the Select Committee have given the reasons in their report for omitting the sections referred to by my learned friend Mr. Kesava Pillai. We say there "*first*, the character of the control which the Dewan can possibly exercise over the powers exercisable by a Division Peishcar appear to be vague and indefinite, and *secondly*, constant interference with the decisions of the Division Peishcar in stamp cases is likely to obstruct the business transactions of everyday life and disturb the course of such transactions even after they are completed on the faith of such decisions. We have however provided for appeals in certain cases".

I would also in this connection ask the attention of the Council to the case reported in I. L. R. 25 Mad. p. 752, especially to the judgment of Sir Bhashyam Aiyangar J., where that learned Judge points out the difficulty of interpretation arising from the use of the word "exercisable" in section 56 (1) of the British Act.

After some discussion, the amendment was carried.

Section 58.

Mr. Mahadeva Iyer.—I beg to propose that the word "Dewan" be substituted for the words "Division Peishcar" in line 7. This amendment is consequential upon the one just carried. The Dewan being the authority referring the case to the High Court, it is to him that the High Court should refer the case back, if necessary.

LIBRARY ARCHIVES Kerala Legislative Assembly

Seconded by Mr. Ramier.

Carried.

Section 59.

Mr. Mahadeva Iyer.—I beg to propose that the word "Registrar" be substituted for "Judges" in line 11.

Seconded by Mr. Nagam Aiya.

Carried.

Section 60.

Mr. Mahadeva Iyer.—I beg to propose that the following be substituted for section 60:—

"60. (1) If any court other than the High Court feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (*a*) to section 36, the Judge may draw up a statement of the case and refer it with his own opinion thereon for the decision of the High Court.

(2) The High Court shall deal with the case as if it had been referred under section 57A and send a copy of its judgment under the seal of the court and the signature of the Registrar to the Dewan and another like copy to the Judge making the reference, who shall on receiving such copy dispose of the case conformably to such judgment.

(3) References made under sub-section (1), when made by a court subordinate to a District Court, shall be made through the District Court, and, when made by a subordinate Revenue Court, shall be made through the court immediately superior."

This again is a close adaptation of section 60 of the British Indian Act. Provision has been made for a copy of the judgment of the High Court in cases falling under the section being sent to the Dewan. In the case of a Revenue court, it is also expressly provided that the references made shall be through the court to which it is immediately subordinate.

Seconded by Mr. Nagam Aiya.

Carried.

Section 61, clause (1).

Mr. Ramier (For Mr. Sesha Aiyar).—I beg to move that the words "or any criminal court in any proceeding under Chapter XII and Chapter XXXV of the Code of Criminal Procedure" be inserted after "jurisdiction" in line 3.

Sections 30 and 32 of the Stamp Regulation now in force confer upon criminal courts in certain proceedings in the matter of admitting in evidence and impounding instruments, the same powers as those conferred on civil courts. There is however no provision in the Regulation for the revision of the order of the criminal courts by the superior courts. This power is now sought to be given by the amendment.

Seconded by Mr. John.

Carried.

Mr. Ramier (For Mr. Sesha Aiyar).—I beg to propose that the word "it" be inserted between "paid" and "may" in line 19. This is only a verbal amendment and hardly calls for any remark.

Seconded by Mr. Govinda Pillai.

Carried.

Section 61, clause (3).

Mr. Mahadeva Iyer.—I beg to propose that the words "and unless the sanction of the Dewan is previously obtained for such prosecution" at the end of this clause be omitted.

These words are not in the corresponding section of the British Indian Act and seem to conflict with the wording of clause (1) of section 71.

Seconded by Mr. John.

Carried.

LIBRARY ARCHIVES Kerala Legislative Assembly

Section 65.

Mr. Ramier (For Mr. Sesha Aiyar).—I beg to propose that the words "Our Government" be substituted for "the Sirkar" in line 2 and in line 14 of this section.

Seconded by Mr. Kesava Pillai.

Carried.

Section 66.

Mr. John.—Sir, with your permission, I beg to propose on behalf of my learned friend, Mr. Padmanabha Menon, that the words "or neglects" in line 3 of clause (*a*) be omitted. The section enacts a penal provision and I think it is hard that persons guilty of mere neglect should be liable to be punished with fine which may in this case extend to Rs 100.

Seconded by Mr. Nagam Aiya.

A discussion followed after which the amendment was put to the vote and lost.

Mr. Mahadeva Iyer.—I beg to propose that the word "wilfully" be inserted between "or" and "neglects" in line 3 of clause (*a*). If the negligence can be proved to be wilful, I think the person guilty of such neglect may well be brought within the penal provisions of the section.

Seconded by Mr. Nagam Aiya.

Mr. Rajaram Row.—I beg to oppose the amendment as, in practice, it will be difficult to distinguish between 'wilful neglect' and 'refusal'. Besides, the word 'wilful' does not occur in the British Indian Act.

The amendment was then put to the vote and lost.

Mr. Mahadeva Iyer.—I beg to propose that "Our Government" be substituted for "the Sirkar" in line 1 of clause (*b*).

Seconded by Mr. Nagam Aiya.

Carried.

Section 69, clause (a).

Mr. Ramier (For Mr. Sesha Aiyar).—I beg to propose that the words "Our Government" be substituted for "the Sirkar" in line 1.

Seconded by Mr. Mahadeva Iyer.

Carried.

Section 71, clause (1).

Mr. Ramier (For Mr. Sesha Aiyar).—I beg to propose that the words "Except as provided in section 61" in lines 1 and 2 of this clause be omitted. These words do not occur in the corresponding section of the British Act. The provisions of this section are intended to be generally applicable and there appear to be no proper reasons for introducing an exception.

Seconded by Mr. Mahadeva Iyer.

Carried.

Mr. Mahadeva Iyer.—I beg to propose that the words "Division Peishcar" be substituted for "Dewan" in line 7 of this clause. The amendment seeks to empower the Division Peishcar to give the necessary sanction for instituting prosecutions. The rights of the public are sufficiently safe-guarded by the provisions of clause (2) which empowers the Dewan or any officer generally or specially authorized by him in this behalf to stay any such prosecution or compound any such offence. In the British Indian Act also the power to sanction prosecutions is vested in the Collector. *See* clause (1) of section 70 of Act II of 1899.

Seconded by Mr. John.

Carried.

LIBRARY ARCHIVES Kerala Legislative Assembly

Section 74.

Mr. Ramier.—I beg to propose that this section be omitted. The section is unnecessary as the same provision is contained in section 18 of the General Clauses Regulation.

Seconded by Mr. Nagam Aiya.

Carried.

SCHEDULE.

Article No. 6.

Mr. Mahadeva Iyer.—I beg to propose that for Article No. 6 of the Schedule, the following be substituted:—

"6. AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE, that is to say, any instrument evidencing an agreement relating to—	
(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or	
(2) the pawn or pledge of movable property,	
where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—	
(*a*) if such loan or debt is repayable on demand or more than three months from the date of instrument evidencing the agreement;	The same duty as a Bill of Exchange [No. 12 (*b*)] for the amount secured.
(*b*) if such loan or debt is repayable not more than three months from the date of such instrument.	Half the duty payable on a Bill of Exchange [No. 12 (*b*)] for the amount secured.
Exemption.	
Instrument of pawn or pledge of goods, if unattested."	

This amendment and the other amendments to the Schedule are all taken from the British Act XV of 1904. As regards this amendment, the member in charge of the Bill says in the Statement of Objects and Reasons:—

"*First*, no provision is at present made for the case where an equitable mortgage is executed to secure the repayment of a loan after more than one year, and the agreement in such a case is consequently liable to the duty of eight annas only under Article No. 5 of the Schedule. It is proposed to amend Article No. 6 so as to impose the same stamp as that required on a document securing repayment within a year. *Secondly*, there is now no specific provision as to the duty leviable upon an instrument evidencing an equitable mortgage where the advance secured is repayable on demand, and such instruments are chargeable either with the same duty as agreements or with the duty leviable on ordinary mortgages, according as the securities are deposited before or at the time of execution. It is proposed to extend the amendment of the Article so as to treat such instruments in the same manner as instruments securing repayments after more than three months. And *Thirdly*, there appears to be some doubt as to the applicability of the Article to pawns and pledges and it is proposed to amplify it so as expressly to include such transactions as well as hypothecations of securities."

The Select Committee in their report on the Bill observe "with regard however to the portion of the Article which relates to the hypothecation, pawn or pledge of movable property, we have adopted in our revised draft the view advanced in Donogh's Indian Stamp Law, 2nd Edition, page 161 and endorsed by the Calcutta High Court in the case reported in I. L. R. 21, Calcutta 241 (at page 244), that the term 'hypothecation' is used in the Article as synonymous with pawn or pledge, and that the Article is intended to relate only to cases in which property is actually given in pledge. We have accordingly restricted the Article in terms to these latter transactions omitting the reference to hypothecation, thus making it clear that all transactions by which movable property is simply appropriated by way of security for the discharge of debt or engagement without parting with its possession (as for example, bills of sale of stock-in-trade) are outside the scope of the Article and consequently are liable to the duty on mortgage deeds as being instruments whereby one person transfers or creates to, or in favour of another, a right over or in respect of, specified property."

LIBRARY ARCHIVES Kerala Legislative Assembly

These quotations clearly explain the reason for the amendment proposed. I, therefore, beg to move its adoption.

Seconded by Mr. Vieyra.

Carried.

Articles Nos.28, 30, and 40.

Mr. Mahadeva Iyer.—I beg to propose the following amendments:—

1. In the entry immediately following Article No. 28, for the words and figure "*See* AGREEMENT by way of EQUITABLE MORTGAGE (No. 6)" substitute the words and figure "*See* AGREEMENT relating to DEPOSIT of TITLE-DEEDS, PAWN or PLEDGE (No. 6)";

2. Omit the entry "EQUITABLE MORTGAGE" following Article No. 30;

3. In Article No. 40—

(*a*) for the words and figure "an AGREEMENT to MORTGAGE (No. 6)" substitute the words and figure "an AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No. 6)".

(*b*) from clause (*b*) omit the words 'at the time of execution'; and

(*c*) omit the exemption: "(3) Instrument of pledge or pawn of goods, if unattested."

All these amendments follow the amendment of Article No. 6 just now carried.

Seconded by Mr. Kesava Pillai.

Carried.

Article No. 41.

Mr. Mahadeva Iyer.—I beg to move that in Article No. 41, for the entry "Four annas" each time it occurs in the second column opposite clause (*b*), the entry "Two annas" be substituted. The reduction of the stamp duty on certain mortgages of crops which is proposed by this amendment is one made in the interests of the agricultural population.

Seconded by Mr. Rajaram Row.

Carried.

Articles Nos. 46 and 55.

Mr. Mahadeva Iyer.—I beg to move the following amendments:—

(1) After Article No. 46 insert the following, namely,—

"PAWN OR PLEDGDE—*See* AGREEEMENT relating to DEPOSIT of TITLE-DEEDS, PAWN OR PLEDGE (No. 6)".

(2) In Article No. 55, after the word "instrument" insert the following parenthesis, namely:

"(not being such a release as is provided for by section 24 A.)"

The first amendment does not call for any special explanation.

As regards the amendment to Article No. 55, I beg to observe that it is necessary because releases falling under section 24 A are liable to be stamped under Article No. 5 (*b*) of the Schedule.

Seconded by Mr. Ramier.

Carried.

Mr. Kesava Pillai.—I beg to propose that the sections of the Bill be renumbered, and that the Bill as now amended be published in the Gazette and the same read again in Council on a future day of which notice shall be given.

Seconded by Mr. Rajaram Row.

The motion was put and agreed to.

The Council dissolved at 11-20 P. M.

V. P. MADHAVA RAO,
President.

LIBRARY ARCHIVES Kerala Legislative Assembly